

COMPTON v. THE SUSQUEHANNA RAIL ROAD.

At common law an inquisition under a writ of *ad quod damnum* must be taken before the property of a citizen can be entered upon and taken from him for a public use.—Under the acts incorporating road and canal companies, unless otherwise provided, the damages may be assessed either before or after the property has been taken; except where, by an admixture, the value would be so obscured as to prevent the jury from making a fair valuation from their own view.—But no unreasonable delay or fraud in taking the inquisition will be suffered.

THIS bill was filed on the 17th of May, 1831, by *Thomas Compton* against *The Baltimore and Susquehanna Rail Road Company, George Winchester, William Gibbs McNeill, Charles Cheesborough, and William Stall*. The bill states that this body politic, by their agents, and particularly by the other defendants, entered upon the lands of the plaintiff, cut down his trees, and dug up his garden, meadows, fields, grass, and grain; and have so entirely destroyed his right of way that he cannot enter upon and depart from his lands as he was wont and has a right to do; that the company have neglected and refused to cause a jury to be summoned to assess the damages he has and is likely to sustain by their acts; that a pretended inquisition has been taken by a jury convened under a warrant issued by a person who was not in fact at the time a justice of the peace; that the supposed inquisition is defectively executed in form and substance, and is invalid and void; and that its return has been improperly withheld and delayed at the instance of the corporation; and when returned, a decision upon it was unjustly caused to be postponed by the body politic. Whereupon the bill prayed, that the company might be restrained by injunction from committing any further injury to his lands, &c.

17th May, 1831.—BLAND, *Chancellor*.—Ordered, that writs of *subpœna* and injunction issue as prayed by the foregoing bill of complaint. And it is further Ordered, that at any time after the filing of the answers of the defendants, the court will hear a motion to dissolve the said injunction; *Provided*, that the defendants give to the plaintiff or his solicitor, five days notice thereof. And the Register is directed to endorse a copy of this order on the writ of injunction, that it may be served therewith on the defendants.

To this bill *Isaac M. Cheesborough*, called in the bill *Charles Cheesborough*, and the other defendants, put in their joint and several answer, on the 30th of May, 1831, in which they stated that the